



The Chairperson
Environment and Planning Review Tribunal
St Francis Ravelin,
Floriana, FRN1230

31st October 2016

Re.: PA/01083/15

Dear Sir,

I write to you on behalf of my client Mr. Benjamin *sive* Ben Muscat in terms of regulation 5 of S.L. 552.24 Daily Penalty Regulations.

By means of a letter dated 10th October 2016, copy herewith attached for ease of reference, my client has been ordered to pay to the authority the sum of €17,386.00.

Allow me to highlight the most important facts of this case in consequential date order:

1. 25th February 2014 – Mr. Muscat submitted an application for full development
2. 12th May 2014 – Mr. Muscat is served with enforcement notice 73/2014
3. 25th March 2015 – validation date of application
4. 31st August 2016 – application approved

The reasons being forward on behalf of my client to arrive at a compromise penalty are the following:

- a. Both the invoice and letter dated 10th October 2016 do not explain for provide for a breakdown as to how the Planning Authority has arrived at imposing such a figure. I am certain that you agree with me that one of the principles of natural justice ascertains that a public body such as the Authority must give reasons for its decisions. Thus not having a breakdown as to how such a fine was calculated leads my client not knowing why he has to pay such an amount

- b. Without prejudice to the preceding submission, it is being opined that penalties may only be imposed on my client from the 29th May 2014¹ and this in terms of regulation 3(1) of S.L. 552.24.
- c. Mr. Muscat, as your records shall demonstrate has paid in full his application fees on the 5th March 2014, yet due to reasons unknown to him, and neither due to any fault of his own, his application was only validated on the 25th March 2015 thus a total of one year and twenty days' lapse. I opine, that Mr. Muscat is not to bear responsibility for inaction by third parties since he had no control over this length of time.
- d. Keeping in mind that applications such as that filed by my client must *sine qua non*, be decided in a period of time which does not exceed 12 weeks, with respect Mr. Muscat is not to be expected to pay penalties for the period of time which the Authority took to decide this application. Allow me to remind you that this application was decided on the 31st august 2016. i.e. 17 months after validation
- e. On a final basis, I also opine that you shall agree with me that part and parcel of both the spirit of national legislation and European legislation, the principle of proportionality is applicable in all circumstances. My client applied for the re-activation of an existing restaurant, to sanction its extension and to put in place a retractable canopy for outdoor seating. This is a start-up venture which required such improvements to enable it to be of service to its clients. Without such an investment, my client would not be able to develop his business, let alone to employ his staff and contribute actively to the country's economic benefit. It is being submitted that the imposition of such a fine is in considering all the above, not proportional to the "illegality" that he did.
- f. Allow me also to remind you that such an amount will seriously imperil my client's cashflow to the extent that this business future will be seriously jeopardised.
- g. Furthermore and by way of conclusion, as per annexed document, it is pertinent to point out that my client had already been served with invoice number 8669 issued by the Authority, which invoice my client had paid promptly and in full and in the full belief that such payment was being done as payment of a fine. Yet on the 25th October 2016, my client was sent by the Authority a credit note for said amount [€2416], copy herewith attached.

¹ i.e. 12th May 2014 plus 16 days thereafter

To this end allow me to highlight the fact that my client understands that he must pay a fine, yet he only wishes to pay what is legally, legitimately and reasonably due to the Authority. From my calculations, and on instructions received from my client, I opine that Mr. Muscat is to bear responsibility for a total period of six months thus accepting to pay a fine equivalent to €2930.00.

I trust that the Environment and Planning Review Tribunal shall consider this request for a compromise penalty favourably.

Kind Regards,



Avv. Arthur Azzopardi

cc. client